

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

NICHOLAS ALSTON, etc., et al.	:	CASE NO. 3:18-cv-247
Plaintiffs,	:	(Judge Walter H. Rice)
v.	:	
PHIL PLUMMER, SHERIFF OF	:	<b><u>PLAINTIFFS' MOTION FOR</u></b>
MONTGOMERY COUNTY, OHIO	:	<b><u>VOLUNTARY DISMISSAL</u></b>
Defendant.	:	

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Now come the Plaintiffs in this lawsuit pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure and move the Court for an Order of dismissal without prejudice.

Respectfully submitted,

/s/ Lawrence J. Greger

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**MEMORANDUM**

Rule 41(a)(2) of the Federal Rules of Civil Procedure provides that, “an action may be dismissed at the plaintiff’s request...by court order, on terms that the Court considers proper.” It also provides that, unless the order states otherwise, such a dismissal is without prejudice.

Much of a positive nature has been accomplished by individuals and entities with public and professional interests in the disputes framed by the Plaintiffs’ Second Amended Complaint. There is reason to hope and anticipate that, with the continued good will of the litigants and others, those accomplishments will continue.

The Complaint in this lawsuit (Doc. No. 1) was filed on July 24, 2018. It addressed issues impacting inmate rights and public interests at the Montgomery County Jail, including jail overcrowding, classification of inmates, imposition of punishment, grievance procedures and concerns of health and safety. On September 11, 2018, the Plaintiffs filed a Motion for Preliminary Injunction (Doc. No. 22) instructing the Defendant Sheriff to conform the inmate population of the jail to the capacity standard of 443 individuals established by the State of Ohio and to adopt and implement policies and procedures necessary for inmate and staff safety. A First Amended Complaint (Doc. No. 28) was filed on October 12, 2018, and a Second Amended Complaint (Doc. No. 33) was filed on November 1, 2018.

Extensive discovery proceedings were conducted, as well as numerous Court conferences on the issues presented. The hearing on the Plaintiffs’ Motion for Preliminary Injunction was later limited to issues raised in Counts III and IV of the Plaintiffs’ Second Amended Complaint, deferring broader issues for substantive consideration at the trial stage of the case (Doc. No. 35). The hearing thus focused on the inmate grievance and disciplinary practices at the jail and constitutional implications of those practices as defined and administered. A preliminary

injunction hearing with multiple witnesses and exhibits was held from December 3, 2018 through December 5, 2018.

Since the time of that hearing counsel for the parties have had a series of conferences with this Court and others in a joint effort to address ongoing and acknowledged problems at the Montgomery County Jail. (See, *Dayton Daily News* 04/23/19 “it is well known, as far as spacing goes, that we do not meet the jail standards for Ohio in most areas . . . .”) While this litigation has been pending the Montgomery County Commissioners engaged a study by a team of experts to identify and make recommendations concerning such problems. At a conference of counsel and the Court held on Jun 25, 2019 a progress report was presented on behalf of the County Commissioners. Highlights from that report confirmed the following accomplishments during the pendency of the litigation on subjects the litigation was designed to address:

1. The grievance process at the jail has been completely revised and dramatically upgraded by the installation of numerous strategically located kiosks for inmate use. Thus there is now a readily available method at multiple sites for inmates to present grievances and requests by computer keyboards in order to ensure effective communication and record keeping.
2. Inmate safety has been improved by intercom replacement, surveillance upgrades, and locking control system upgrades.
3. The average inmate population at the jail on a daily basis has gone from over 950 inmates per day to just over 700 a day, and efforts are ongoing to continue reducing the recognized problems of jail overcrowding. Bunkbeds are being eliminated.

4. The Courts are assisting in the effort to reduce the overcrowding conditions which are a significant root cause of many of the recognized problems at the jail. Seventy percent (70%) of the jail population continues to consist of individuals who are simply awaiting trial or disposition of the charges against them. Many of these inmates are not charged with crimes of violence and present no significant risk to society if released pending trial. Bail reform in the court system is being given serious consideration.
5. The components of the jail population have changed in recent years with increased numbers of women and of individuals with substance abuse or mental health issues. Medical and mental health issues are being addressed with increased staff and with consolidation and expansion of contracted health services at the jail involving significant cost increases.
6. The County is committed to invest significant funds in facility improvements with a goal of meeting current detention standards set by accrediting agencies.
7. Programs are in place to address and implement the recommendations presented by the 2019 CGL analysis of jail conditions.

Plaintiffs' counsel are appreciative of these good faith efforts to address the issues that gave rise to the litigation they have placed before this Court. We are hopeful that the spur of litigation will not be necessary to assure positive progress in those efforts.

By the same token we are aware that the future only becomes known as it passes through the present to the past. In representing individuals who are or will become inmates of the Montgomery County Jail we have a professional interest in protecting the legal and constitutional rights of those individuals. In the present climate of positive effort by the County,

the Sheriff, the Courts and all the other individuals and entities involved in improving the conditions and operations of the County Jail, this lawsuit appears for the time being to have served the goals sought by the individual Plaintiffs. We, therefore, ask that this lawsuit be dismissed without prejudice to the reassertion of claims if the perceived need to do so recurs.

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**CERTIFICATE OF SERVICE**

This is to certify that on the 1<sup>st</sup> day of August, 2019, the foregoing document was filed with the Clerk of Courts, United States District Court, Southern District of Ohio, by way of the CM/ECF system which will send notification to all parties of record.

/s/ David C. Greer

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